

REMARKS/ARGUMENTS

STATUS OF CLAIMS

In response to the Office Action dated July 18, 2007, claim 12 has been amended.

Claims 1-10, 12-15 and 17-19 are now pending in this application.

The indication that claims 1-10 and 17-19 are allowable is acknowledged and appreciated.

REJECTION OF CLAIMS UNDER 35 U.S.C. § 112, SECOND PARAGRAPH

Claims 12-15 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. In support of this position, the Examiner maintains that claim 12 is vague since no structure is set forth to actually define the cap with the electrodes attached to the material.

The rejections are respectfully traversed.

Claim 12 recites:

A measuring cap for measuring electrical responses from the human body, which measuring cap comprises:

one or more electrode structures according to claim 1, wherein the measuring leads transmit measurement results to measuring equipment.

Applicants submit that no structure of a cap is necessary as the preamble is directed to a measuring cap. That is, a cap is implied in claim 12. It is noted that the Examiner has not cited any case law that supports the position that structure defining a cap is required to make claim 12, directed to a measuring cap having one or more

electrodes of claim 1, definite. In fact, Applicants are not aware of any current case law that supports the Examiner's position.

Furthermore, the primary purpose of the requirement of definiteness of claim language is to ensure that the scope of the claims is clear so the public is informed of the boundaries of what constitutes infringement of the patent (see MPEP § 2173). In this regard, Applicants submit that when the language of claim 12 is read in light of the specification, as is required, an artisan would readily understand the metes and bounds of the claimed invention.

While Applicants do not believe the present rejections are correct, since the Examiner has indicated that claims 12-15 would be allowable if amended to overcome the present rejections, to expedite prosecution, claim 12 has been amended to recite:

A measuring cap for measuring electrical responses from the human body, which measuring cap comprises:

*a cap configured to be placed upon a human head; and
one or more electrode structures according to claim 1 attached to
the cap,* wherein

*the measuring leads of the one or more electrode structures
transmit measurement results to measuring equipment attached to the
measuring leads.*

It is believed that claim 12, as amended, recites the invention with the degree of precision and particularity required by the statute. In addition, Applicants submit that the present amendments to claim 12 are non-narrowing claim amendments.

In view of the above, it is respectfully urged that the rejection of claims 12-15 under 35 U.S.C. § 112, second paragraph, be withdrawn, and that claims 12-15 be allowed.

CONCLUSION

In view of the above, applicant(s) believes the pending application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Edward J. Wise (Reg. No. 34,523) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

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Respectfully submitted,

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